

PUBLIC COPY

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

U.S. Department of Homeland Security
Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, DC 20536

FILE: WAC 02 122 50159

OFFICE: CALIFORNIA SERVICE CENTER

DATE:

JAN 06 2004

IN RE: Petitioner:
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

IN BEHALF OF PETITIONER: SELF-REPRESENTED

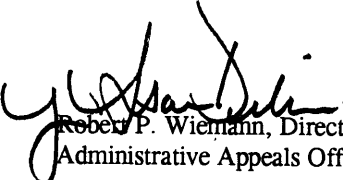
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is an engineering firm that employs 28 persons and has a gross annual income of \$3,200,000. It seeks to employ the beneficiary as a civil engineer. The director denied the petition because he found that the beneficiary was not qualified to perform the duties of a civil engineer.

On appeal, the petitioner submits a copy of the beneficiary's Engineer-in-Training certificate. The petitioner states that this certificate authorizes the beneficiary to perform the duties of the offered position.

Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

The issue to be discussed in this proceeding is whether the beneficiary is qualified to perform the duties of a specialty occupation.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C)
 - (i) experience in the specialty equivalent to the completion of such degree, and
 - (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of

the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(v)(C), in certain occupations which generally require licensure, a state may allow an individual to fully practice the occupation under the supervision of licensed senior or supervisory personnel in that occupation. The petitioner explained in the original filing that the beneficiary would exercise the duties of a civil engineer under the supervision of a registered engineer. The original filing included the beneficiary's academic records, but not the Engineer-in-Training certificate, which according to its issue date, she already possessed. The director requested a copy of the beneficiary's license to practice engineering in California, and in response, the petitioner submitted a copy of the beneficiary's California driver's license. On July 31, 2002, the director denied the petition.

On appeal, the petitioner submits a copy of the beneficiary's California Engineer-in-Training certificate, which was issued on June 30, 2000, and remains valid until the beneficiary obtains professional licensure.

The Professional Engineers Act sets forth licensure regulations for the practice of engineering in the state of California. An

engineer may practice in his or her own right using the title of "Professional Engineer" after meeting all the requirements for registration as a professional engineer. The Professional Engineers Act also allows subordinate engineers to perform duties under the supervision of a registered professional engineer. In fact, section 6740 provides for exemption from registration for subordinate engineers who do not practice in their own right and do not use the title "civil engineer".

Provisions for registration as an "Engineer-in-training" are found in section 6756, which provides that the engineer-in-training may not practice in her own right and may not use the title "professional engineer". She may, however, perform civil engineering duties under the supervision of a registered professional engineer. The beneficiary is registered as an engineer-in-training and is offered a position in which she would perform the duties under the supervision of a registered engineer. The evidence provided on appeal demonstrates that the beneficiary is qualified to perform the duties of a specialty occupation.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained. The director's order is withdrawn and the petition is approved.